
(2014) 10 KL CK 0322
In the High Court Of Kerala
Case No : W.P. (C). No. 22995 of 2014 (Y)

Ranadeepan K.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Citation : (2014) 10 KL CK 0322

Hon'ble Judges : Dama Seshadri Naidu, J

Bench : Single Bench

Advocate : N. Manoj Kumar and Jayasree Manoj, Advocate for the Appellant;
Abdul Kareem, (SC), Government Pleader, Advocate for the Respondent

Judgement

Dama Seshadri Naidu, J.—In this writ petition the issue that arises for consideration is the entitlement of the petitioners to be promoted to the next higher cadre.

2. Briefly stated, petitioners 1 to 3 have been working as Driver Grade-I in the second respondent Corporation, whereas petitioners 4 and 5 have been working as Lascar/Helper Grade-II. The first petitioner got his entry into service as Driver Grade-II on 20.06.2007; the second petitioner on 26.06.2007 and third petitioner on 18.10.2007. In course of time, they were promoted to the present cadre, i.e., Driver Grade-I through Exhibit P1 dated 07.07.2010.

3. In so far as petitioners 4 and 5 are concerned, both of them got into service as Lascar/Helper Grade-II on 09.02.2007. Petitioners 1 to 3 contend that given the statutory scheme of the second respondent Corporation and given the existence of clear vacancies, they ought to have been promoted to the post of Driver Senior Grade, inasmuch as they already have the necessary experience to fill up the said grade. On the other hand, petitioners 4 and 5 have grievance that their promotions have been long due and had the authorities considered their case on time, they would had the next two promotions in their career. In other words, given their seniority and given the clear vacancies existing in the

Corporation, initially they should have been promoted as Lascar/Helper Grade-I and later as Lascar/Helper Senior Grade. Thus they are said to have been denied the opportunity of being promoted to two higher cadres.

4. The petitioners, having made Exhibits P2 and P3 representations to the second respondent Corporation, finally submitted Exhibit P4 representation to the first respondent since the second respondent Corporation has not responded to their repeated requests to be considered for promotion. Eventually the first respondent refused the claim of the petitioners through Exhibit P5, which is assailed in this writ petition.

5. Before adverting to the submissions made by the learned counsel for the petitioners, it is appropriate to examine the reason that weighed with the Government in refusing the claim of the petitioners for promotion, through Exhibit P5, which reads as follows:

"I am to invite your attention to the reference cited and to inform you that your petition cannot be considered as direction has been issued to Managing Director, Kerala Land Development Corporation Limited to abolish the posts which are not included in the Special Service Rules of Kerala Land Development Corporation."

6. In the above factual background, assailing Exhibit P5, the learned counsel for the petitioners has submitted that it is very evident from Exhibit P9 that there are ten sanctioned posts of Drivers and eleven posts of Lascar. Making a specific reference to Exhibit P9, the learned counsel has also submitted that through Resolution 1621, the second respondent Corporation, way back on 12.02.1986, decided to effect promotions among the Drivers Grade-II, Grade-I and Senior Grade in the ratio of 1:1:1. Through Resolution 1622, a similar decision was taken to promote the Lascar of different cadres in the same ratio. It is the contention of the learned counsel for the petitioners that once there are specific sanctioned posts with a particular promotion ratio, as could be seen from Exhibit P9, the rejection of the Government to consider the case of the petitioners' promotions citing the reason that a direction has already been issued to the Managing Director of the second respondent Corporation to abolish the posts which are not included in the Special Service Rules of Kerala Land Development Corporation (KLDC) cannot be sustained.

7. The learned counsel has further brought to the notice of this Court that, apart from the sanctioned posts, the Government has also fixed the pay scales for the posts in question. He has laid emphasis on the fact that it is not invariable that each and every post is to be included in the Special Service Rules of Kerala Land Development Corporation. In this regard, he has also submitted that there are numerous instances where the Government has continued the sanctioned posts by effecting promotions, notwithstanding their non inclusion in the Special Service Rules. Accordingly, the learned counsel has urged this Court to allow the writ petition.

8. The learned Standing Counsel for the second respondent Corporation, having

appeared at the earliest point of time on 01.09.2014 and 17.09.2014, sought time on those dates to get instructions. Subsequently, on the last two occasions, the learned Standing Counsel did not choose to appear before the Court to assist it. On 01.10.2014, taking note of the absence of the learned Standing Counsel for the second respondent Corporation, this Court observed that there shall be one more adjournment to facilitate the second respondent Corporation to put forward its defence, failing which this Court would be constrained to proceed with the matter based on the material available on record. When the matter is listed for hearing today, once again, nobody represented the second respondent Corporation.

9. The learned Government Pleader, on his part, has submitted that Exhibit P5, which is impugned in the present writ petition, is not an order but only a communication informing the petitioners about the decision which had been taken by the Government at an earlier point of time. He has contended that no specific purpose would be served by quashing Exhibit P5. He has also submitted that, apart from seeking a simple relief of quashing Exhibit P5, the petitioners have not sought any substantial relief against the Government, making it necessary for the Government to place on record its defence concerning the issue raised by the petitioners.

10. At this juncture, the learned counsel for the petitioners has submitted that there is no financial liability on the part of the Government involving the posts held by the petitioners and in the event of their promotion, it is the Corporation which has to take care of the pays and perks.

11. Heard the learned counsel for the petitioners and the learned Government Pleader for the first respondent, apart from perusing the record.

12. Indeed, when no response was forthcoming from the second respondent Corporation to the representations made by the petitioners in Exhibits P2 and P3, the petitioners submitted Exhibit P4 representation before the first respondent, which in turn, issued Exhibit P5 order of rejection. A perusal of the said order reveals that there is rejection in praesenti, but the reason supplied thereof is to the effect that on an earlier occasion the Government directed the Managing Director of the second respondent Corporation to abolish the posts which were not included in the Special Service Rules of KLDC.

13. As could be seen from Exhibit P9 dated 06.08.2014, Format No. I attached thereto gives the staffing pattern and also the number of sanctioned posts in each category. Serial Nos. 1 to 3 mention Lascar/Helper Grade-II, Grade-I and Higher Grade respectively. Similarly, Serial Nos. 16 to 18 enumerate Driver Grade-II, Grade-I and Higher Grade respectively. Against those enumerated posts, the number of sanctioned posts have also been specified. Exhibit P9 further reveals that through Resolution Nos. 1621 and 1622, in its 119th Meeting, the Board of Directors of the second respondent Corporation decided to effect promotions at the ratio of 1:1:1. It is evident that the petitioners secured

Exhibit P9 information and also other information by taking recourse to the provisions of the Right to Information Act, as could be seen from Exhibit P8.

14. In the first place, the employer, i.e., the second respondent Corporation, despite entering its appearance has not chosen to contradict the claim of the petitioners to be considered for promotions. The Corporation, it goes without saying, is an independent entity having its own administrative apparatus. Even before knocking at the doors of this Court, the petitioners made Exhibits P2 and P3 representations, but the authorities remained unconcerned. It cannot be denied that Government may have a final say in the matter when it comes to staffing pattern and pay structure of the employees of the second respondent Corporation. All that Exhibit P5, the so called order of rejection, reveals is that the Government has already directed the Managing Director of the second respondent Corporation to abolish the posts which are not included in the Special Service Rules of KLDC. Having said that, it is essential to observe that to this day no orders have been passed by the second respondent abolishing the posts in compliance with the direction of the first respondent; or at least, no material has been placed before this Court to the said effect.

15. In my considered view, so long as the direction of the Government, as has been revealed in Exhibit P5, has not been complied with by the second respondent Corporation, the rights of the petitioners, being the employees of the second respondent Corporation, remain intact. Further, no countervailing material has been produced to show that the decision taken by the second respondent in its 119th Meeting of the Board of Directors, as could be seen from Exhibit P9, has been rescinded or dispensed with.

16. In the facts and circumstances, this Court is of the considered opinion that the petitioners shall be considered by the second respondent to be promoted to their respective higher cadre in terms of Exhibit P9.

17. This Court, therefore, directs the second respondent Corporation to consider the case of petitioners 1 to 3 to be promoted to the cadre of Driver Senior Grade and petitioners 4 and 5 to be considered to the post of Lascar/Helper Grade-I and Senior Grade, following the method and manner as has been spelt out in Exhibit P9, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

With the above direction, the writ petition stands allowed. No order as to costs.